

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF GAY ISLAND OYSTERS, INC. FOR AN AQUACULTURE LEASE LOCATED IN THE MEDUNCOOK RIVER, CUSHING, KNOX COUNTY, MAINE))))))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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On January 4, 2004 Gay Island Oysters, Inc. of Cushing, Maine applied for an aquaculture lease totaling 1.84 acres in the coastal waters of the State of Maine, located in the Meduncook River, Cushing, Knox County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (Crassostrea virginica) using suspended culture techniques. The application was accepted as complete on February 2, 2004. A public hearing on this application was held on July 20, 2004 at 6:00 p.m. in Cushing.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that, taking into consideration the number and density of aquaculture leases in an area, the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area; significant wildlife habitat and marine habitat or the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna; or the public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site and that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the July 20, 2004 public hearing. At the public hearing, testimony was given by the applicant, Robert Lynde.

According to the application, the proposed lease is sought to raise American oysters on a lease site totaling 1.84 acres, for a lease term of ten (10) years. The applicant testified that the coordinates of the proposed lease were modified slightly from those set forth in the application during the Department's site visit. He indicated that the coordinates in the Department's site report are the correct coordinates for the lease site and the acreage for the proposed lease site is 1.728 acres.

The applicant testified that he currently operates an experimental aquaculture lease in the proposed lease area. The proposed lease activities would be conducted in the same manner as under the experimental lease and would consist of growing shellfish using an upweller and floating ADPI bags. According to the application, a 16' x 24' float and a 10' x 20' FLUPSY upweller float would be located on the northeast corner of the lease. Juvenile seed would be grown in the upweller, and then relocated to floating bags on the proposed lease site. Maximum stocking density would be between 1,000,000 and 1,500,000 oysters in different stages of growth. According to the application, the applicant would be on site daily for routine maintenance and cleaning. Harvesting is performed as needed and it is estimated that 3-4 harvests would be performed per season. The gear would be cleaned with a small discharge pump. The applicant testified that the pump is quiet and makes less noise than a lawn mower. The applicant does not plan to use lighting at the lease site. The proposed lease site would be accessed by boat

from the applicant's adjacent property. All seed shellfish would be obtained from the hatcheries of Muscongus Bay Aquaculture in Bremen, Maine or Island Institute in Rockland, Maine.

In accordance with Department regulations, 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to this environmental characterization, the river bottom at the proposed lease site consists of firm mud and sand. The area is relatively flat with little or no vegetation. Fauna consists of lobsters, mackerel, pollack, green crabs, spider crabs, and minnow fish. The depths are estimated to be between 6 and 15 feet. The applicant included a letter from the Maine Department of Inland Fisheries and Wildlife with his application. According to Regional Wildlife Biologist Keel Kemper, the proposed lease is not located within an Essential or Significant Wildlife Habitat.

According to the application, the applicant is the only riparian landowner within 1,000 feet of the proposed lease site. Additionally, according to the application, there is minimal usage of the area of the proposed lease for fishing and lobstering. The applicant provided a letter from Cushing Harbormaster Dan Staples with his application. Mr. Staples stated that the proposed lease would have no effect on boat traffic or fishing in the area. The applicant testified that he has not received any complaints regarding his experimental lease operations.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on June 8, 2004. During the site visit, a diver survey, utilizing an underwater video camera, was performed. The AEC created a site report summarizing the information obtained during the site visit. According to the AEC's report, the proposed site is located west of Gay Island, offshore of the applicant's property. The proposed site is located in water depths ranging approximately from 0.5 feet to 15 feet at mean low water. According to the AEC's report, the bottom consists of mud and sand in the shallower areas to the east and softer mud to the west and north. Local flora consists of a moderate amount of eelgrass throughout the shallower half of the proposed lease site. The AEC noted that in a previous dive of the area on May 3, 2001, significantly less eelgrass was observed in the area of the proposed lease site. Thus, it appears that over the three years of the experimental lease operations, eelgrass density

has increased markedly. The AEC recommended that any structure placed on the bottom of the lease site, such as an over-wintering cage, be placed in the deeper water near the northwest corner of the lease site so as not to damage the eelgrass. Other flora and fauna observed at the proposed lease site includes an abundance of brushy red-weed, common periwinkles and hermit crabs; a common occurrence of blue mussels and rock crabs; an occasional occurrence of lobsters and green crabs; and a patchy abundance of kelp and knotted wrack.

According to the AEC, the proposed activities will not interfere with navigation or riparian ingress and egress. According to the AEC's report, aside from the applicant's dock, no moorings or docks were observed within the area of the proposed lease site. Two docks are located approximately 1,000 feet to the north and south of the proposed lease site. According to the AEC, the proposed lease site is located on the eastern side of the main navigational channel between Gay and Morse Islands. Approximately 750 feet of navigable water remains between the two islands. Additionally, navigation in the area is naturally restricted due to the shoal waters located to the south of the proposed lease which force vessels away from the lease site and into the main channel. According to the AEC, the Department did not receive any complaints concerning the applicant's experimental lease activities at the proposed lease site.

According to the AEC's report, no fishing activity was observed within the area of the proposed lease site during the site visit. Limited lobster fishing was observed in the area surrounding the lease site. According to the AEC, the nearest aquaculture lease is located in the St. George River, approximately 4.6 miles from the proposed site. According to the AEC's report the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division.

Findings of Fact

The proposed lease activities have been taking place on the lease site for the past three years pursuant to an experimental lease; and the Department has not received any complaints in reference to the experimental lease operations.

The proposed lease site is located offshore of the applicant's property on the west side of Gay Island in the Meduncook River, east of the main navigational channel. Water depths at the proposed lease site range approximately from 0.5 to 15 feet at mean low water. Aside from the applicant's dock, the nearest dock is located 1,000 feet from the proposed lease site. There are no moorings located in the area of the proposed lease. Approximately 750 feet of navigable water remains between the Gay and Morse Islands. Navigation in the area is naturally restricted due to the shoal waters located to the south of the proposed lease which force vessels away from the lease site and into the main channel. Based on this evidence, I find that the lease will not unreasonably interfere with navigation or the ingress and egress of riparian owners.

Limited lobster fishing occurs in the area of the proposed lease. The nearest existing aquaculture lease is located 4.6 miles from the proposed lease site. The area of the proposed lease is classified as "open" for the harvest of shellfish. The local harbormaster expressed the opinion that the proposed lease would have no effect on fishing in the area. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

The bottom of the proposed lease site consists of sand and mud. Local flora and fauna consists of a moderate amount of eelgrass throughout the shallower half of the proposed lease site; an abundance of brushy red-weed, common periwinkles and hermit crabs; a common occurrence of blue mussels and rock crabs; an occasional occurrence of lobsters and green crabs; and a patchy abundance of kelp and knotted wrack. The amount of eelgrass in the area has increased over the three years of the experimental lease operations. In order to protect the eelgrass in the shallower areas of the lease site, any structures placed on the bottom of the lease should be placed in the deeper water, toward the northwest corner of the lease site. The proposed lease site is not located within an Essential or Significant Wildlife Habitat. Based on this evidence, I find that the proposed activities will not unreasonably interfere with significant

wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

All seed shellfish will be obtained from the hatcheries of Muscongus Bay Aquaculture in Bremen, Maine or Island Institute in Rockland, Maine. Based on this evidence, I find that there is an available source of American oysters.

The proposed lease site is not located within 1,000 feet of any public beaches, parks, docking facilities, or conserved land. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency.

The aquaculture gear on the proposed lease site would be cleaned with a small discharge pump. The pump produces less noise than a lawn mower. Additionally, lighting will not be used at the lease site. I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site

Conclusions of Law

Based on the above findings, taking into consideration the number and density of aquaculture leases in the area, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters;
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency; and

7. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 1.728 acres from the date of this decision for the purpose of cultivating American oysters (Crassostrea virginica) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$5,000 conditioned upon their performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, lobster fishing and recreational boating and fishing shall be allowed on the open areas of the lease;
- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80; and
- (3) all structures placed on the bottom of the lease site, such as over-wintering cages, shall be placed in the deeper water near the northwest corner of the lease site.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources